

1 HONORABLE RICHARD A. JONES
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 R.D., a minor, by and through her personal
11 representatives, CATHERINE DAVIS and
12 SEAN DAVIS; and CATHERINE DAVIS,
13 individually; and SEAN DAVIS,
14 individually,

15 Plaintiffs,

16 v.

17 LAKE WASHINGTON SCHOOL DISTRICT,
18 a municipal corporation,

19 Defendant.

20 Case No. 18-cv-1009-RAJ

21 **ORDER DENYING
22 PLAINTIFFS' MOTION
23 FOR RECONSIDERATION**

24 **I. INTRODUCTION**

25 This matter comes before the Court on Plaintiffs' Motion for Reconsideration
26 ("Motion"). Dkt. # 81. Having considered the Motion, the relevant portions of the record,
27 and the applicable law, the Court finds that oral argument is unnecessary. For the reasons
below, the Court **DENIES** the Motion.

28 **II. DISCUSSION**

29 Motions for reconsideration are disfavored and will be granted only upon a
30 "showing of manifest error in the prior ruling" or "new facts or legal authority which could
31 not have been brought to [the court's] attention earlier with reasonable diligence." Local
32 R. W.D. Wash. ("LCR") 7(h)(1).

33 Plaintiffs argue that manifest legal and factual errors exist in the Court's order
34
35 ORDER – 1

1 granting in part Defendant's Motion for Partial Summary Judgment such that
2 reconsideration is appropriate. *See* Dkt. # 81. Plaintiffs take issue with the Court's finding
3 that the accommodations sought by Mrs. Davis—*i.e.*, "supervision" and "gross motor
4 activity"—were not necessary accommodations for R.D.'s Chilblains disability. Dkt. # 81
5 at 3. Plaintiffs instead contend that the Court should have found exercise and supervision
6 to already be part of a FAPE-compliant recess and denied to R.D.

7 As pertinent to this case, the U.S. DOE's § 504 regulations require recipients of
8 federal funds to "provide a free appropriate public education to each qualified handicapped
9 person," and define "appropriate education" as:

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11 regular or special education and related aids and services that
12 (i) are designed to meet individual educational needs of
13 handicapped persons as adequately as the needs of
14 nonhandicapped persons are met and (ii) are based upon
adherence to procedures that satisfy the requirements of [34
C.F.R.] §§ 104.34, 104.35, and 104.36.

15 *Mark H. v. Lemahieu*, 513 F.3d 922, 929 (9th Cir. 2008) (citing 34 C.F.R. § 104.33(a), (b)).
16 The regulations further require that, "[i]n providing or arranging for the provision of
17 nonacademic and extracurricular services and activities, including meals, recess periods,
18 and the services and activities set forth in § 104.37(a)(2), a recipient shall ensure that
19 handicapped persons participate with nonhandicapped persons in such activities and
20 services to the maximum extent appropriate to the needs of the handicapped person in
21 question." 34 C.F.R. § 104.34(b).

22 Based on the definitions above, Plaintiffs have failed to demonstrate manifest error
23 in the Court's analysis. First, the record is devoid of evidence that "supervision" and "gross
24 motor activity" are accommodations designed to meet individual educational needs of
25 persons affected by Chilblains. Nor is there evidence to support finding that "supervision"
26 and "gross motor activity" are accommodations that would have permitted R.D. to
27 participate with nonhandicapped to the maximum extent.

1 Plaintiffs' remaining contentions are also without merit. Plaintiffs complain that the
2 District defended against R.D.'s §504 and ADA claims using false statements; no
3 explanation is given, however, for why this could not have been brought to the Court's
4 attention earlier with reasonable diligence. Plaintiffs also argue that the Court's order
5 neglected the fact that R.D. was sent outside on cold and wet days in 2016. Plaintiffs
6 referred to these facts to support its argument that Defendant's failed to provide
7 "supervision" as a reasonable accommodation. *See* Dkt. # 37 at 20 (arguing that summary
8 judgment was inappropriate because District did not supervise when R.D. could go
9 outside). The Court has discussed the "supervision" accommodation at length, both here
10 and in the summary judgment order. Finally, Plaintiffs' argument on deliberate
11 indifference rehashes prior facts and arguments. And the Court explained previously, the
12 District offered evidence that it responded to Plaintiffs' complaints by assigning R.D. a
13 "one-on-one helper" to supervise R.D. during recess, considered several options for indoor
14 recess activities, including having R.D. join a separate physical education class in session,
15 and recommended a standing monthly meeting to review support for R.D. *See* Dkt. # 62
16 at 9.

17 Having found no manifest errors of law or fact in the summary judgment order, the
18 Court **DENIES** Plaintiffs' motion.

19 **III. CONCLUSION**

20 For the reasons stated above, the Court **DENIES** Plaintiffs' Motion.

21 DATED this 4th day of December, 2019.

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The Honorable Richard A. Jones
United States District Judge